

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CARL ALONZO BROOKS,

10 Plaintiff,

11 v.

12 COREY ENDO and NANCY TENNEY,

13 Defendants.
14

CASE NO. C18-0658-JCC

ORDER

15 This matter comes before the Court on Plaintiffs' objections (Dkt. No. 11) to United
16 States Magistrate Judge Brian Tsuchida's report and recommendation (Dkt. No. 10) regarding
17 Plaintiffs' 28 U.S.C. section 1983 complaint (Dkt. No. 3). Having thoroughly considered the
18 relevant record, the Court finds oral argument unnecessary and hereby OVERRULES Plaintiff's
19 objections and ADOPTS Judge Tsuchida's report and recommendation.

20 Plaintiff Carl Alonzo Brooks filed a *pro se* civil rights complaint under 42 U.S.C. § 1983
21 in which he alleges his former public defenders, Defendants Endo and Tenney, omitted
22 information from an opening brief they filed on behalf of Brooks with the Ninth Circuit Court of
23 Appeals in 2006. (Dkt. No. 3 at 2.) These allegations arise from a prior habeas corpus
24 proceeding, in which Endo and Tenney represented Brooks before the Ninth Circuit Court of
25 Appeals. *See Carl A. Brooks v. Maggie Miller-Stout*, No. C04-0922-JCC, Dkt. No. 40 at 4 (W.D.
26 Wash. Mar. 14 2006). Brooks' complaint includes the following allegations against Endo and

1 Tenney:

2 Between March 6th 2006 through June 3rd, 2015 the Defendants Endo and Tenney,
3 by gross neglect of public duty, willful and wanton misconduct, conspired to violate
4 my (Plt. Brooks) fundamental liberty interest and public interest in effective
5 assistance, for the purpose of causing my (Plt. Brooks) estate as a minor and estate
6 as a emancipated minor to, for the balance of what remains since 2006, of my (Plt.
7 Brooks) duration of confinement, to suffer from irreparable Battered Child
8 Syndrome, and irreparable Post-Traumatic Stress Syndrome, and irreparable
9 Traumatic Mental and Emotional Distress by—omission from their (Endo and
10 Tenney's) opening brief to the ninth circuit court of appeals, my (Plt. Brooks) actual
innocence to murder habeas corpus ground as a gateway to a hearing an
determination of the merits of my procedurally defaulted habeas corpus, and which
was motivated by Defs. Endo and Tenney's attempt to get away with committing a
overt act in the furtherance of the May 18th 1978 Dept. of Social and Health
Services (DSHS) Presentence Investigation Report's (PSIR) fabricated allegations,
and fraudulent concealments, as follows.¹

11 (Dkt. No. 3 at 2.) The complaint goes on to describe details about Brooks' state court conviction,
12 but contains no other allegations regarding Endo or Tenney. (*See generally id.*) Judge Tsuchida
13 recommends the Court dismiss Plaintiff's complaint for two reasons. First, Plaintiff's section
14 1983 claims are time-barred because they arise from acts that occurred well outside the three-
15 year statute of limitations. (Dkt. No. 10 at 3–4.) Second, the Defendants' alleged acts, performed
16 in their capacity as public defenders, were not taken under color of state law as required to
17 establish a section 1983 violation. (*Id.* at 4–5.)

18 Plaintiff's objections do not address Judge Tsuchida's recommendations. Rather, Brooks
19 asserts that the Court should recuse itself from this case because it has a conflict of interest based
20 on its prior rulings in an unrelated section 1983 case Brooks filed. (Dkt. No. 11 at 6) (citing *Carl*
21 *A. Brooks v. Joanne Y. Maida, et al.*, No. C03-0265-JCC, Dkt. No. 110 (W.D. Wash. Feb. 26,
22 2016)). The Court finds no basis for recusal and therefore DENIES Brooks' objection. The rest
23 of Brooks' objections neither address the statute of limitations issue nor explain how Defendants
24 acted under color of state law. (*See generally* Dkt. No. 11.) Not only are Brooks' objections non-
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26 ¹ These allegations are taken verbatim from the complaint. (Dkt. No. 3 at 2.)

1 responsive to Judge Tsuchida's recommendations, they are largely unintelligible. (*See generally*
2 *id.*) Therefore, Brooks' objections are OVERRULED.

3 The Court concludes that Brooks' complaint fails to state a claim upon which relief can
4 be granted. The acts that Brooks alleges represent a section 1983 violation occurred in 2006, and
5 are thus barred by the statute of limitations. *See Rose v. Rinaldi*, 654 F.2d 546, 547 (9th Cir.
6 1981); Wash. Rev. Code § 4.16.080(2) (applying a three year statute of limitations to section
7 1983 claims). Moreover, Defendants' alleged acts were not taken under color of state law
8 because they were undertaken while acting as public defenders. *See Miranda v. Clark County,*
9 *Nevada*, 319 F.3d 465, 468 (9th Cir. 2003). Given the deficiencies with Brooks' complaint, the
10 Court concludes that his claims should be dismissed with prejudice because further amendment
11 would be futile. *See Swartz v. KPMG LLP*, 476 F.3d 756, 761 (9th Cir. 2007).

12 Accordingly, the Court ORDERS as follows:

- 13 (1) The Court ADOPTS the Report and Recommendation;
14 (2) The complaint is DISMISSED with prejudice for failure to state a claim upon which
15 relief may be granted;
16 (3) This dismissal shall count as a STRIKE under 28 U.S.C. § 1915(g); and
17 (4) The Clerk is DIRECTED to send a copy of this order to the parties.

18 DATED this 9th day of July 2018.

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22 John C. Coughenour
23 UNITED STATES DISTRICT JUDGE
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